



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0580]

RIN 1625-AA87

Security Zones; Naval Base Point Loma; Naval Mine Anti Submarine Warfare Command; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes extending a portion of an existing San Diego Bay security zone at Naval Base Point Loma to support the construction of a new Naval fuel pier. In addition to the extension of the Naval Base Point Loma security zone, a new security zone will be established at the Naval Mine and Anti-Submarine Warfare Command to protect the relocated marine mammal program. These security zone modifications are intended to restrict vessels from a portion of the San Diego Bay in order to ensure the safety and security of Naval assets. Both Security Zones will safeguard Naval assets, such as vessels, property and waterfront facilities from destruction, loss of injury from sabotage or other subversive acts. No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, The Commander of Naval Base Point Loma, the

Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments.

To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this

rule, call or e-mail Lieutenant John Bannon, U.S. Coast Guard Sector San Diego; telephone (619) 278-7261 or by e-mail at John.E.Bannon@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be

considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0580] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0580) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West

Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On October 1, 2009, the U.S. Coast Guard published a final rule entitled "Security Zone; Naval Base Point Loma; San Diego Bay, San Diego, CA" in the Federal Register. At the request of the U.S. Navy, the revised security zone combined two existing security zones. The new security zone also extended the existing security zone along the naval base and provided an additional 500

feet of protection for installation of water barriers to provide a line of demarcation and defensive measures as a safety guard from destruction, loss or injury from sabotage or other subversive acts, accidents, or other causes of similar nature.

For more information on existing regulatory actions for the preexisting security zone, see docket USCG-2008-1016 on www.regulations.gov or 74 FR 50708 in the October 1, 2009 edition of the Federal Register.

The existing security zone in 33 CFR 165.1102, which resides within an existing U.S. Army Corp of Engineers Restricted Area (see 33 CFR 334.870), is now in need of another expansion to provide the same level of protection for a new fuel pier being built to replace the existing pier. The new pier will be built further out towards the main channel and allow for deeper draft vessels. The expansion of the fuel pier and increased size of the security zone of 500 feet around the front face of the fuel pier still allows for safe transit between the required additional security and the federal channel, during the new pier development and after completion, for commercial and recreational vessels. Because of construction activities, the marine mammal pens will temporarily be moved from their present location at Naval Base Point Loma to the Naval Mine and Anti-Submarine Warfare Command, and an impermanent security zone of 100 feet from shore will be established for their safety and security.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The U.S. Navy is requesting an extension of the existing security zone for the Naval Base Point Loma Fuel Pier construction and the establishment of a security zone at the Naval Mine and Anti-Submarine Warfare Command to temporarily house the Navy's marine mammal program during the construction phase of the new fuel pier.

The extended security zone at Naval Base Point Loma will add an additional 500 feet east to provide standoff from the new replacement fuel pier which will exist closer to the federal channel in deeper water. The marine mammal pen security zone will also be established at the Naval Mine and Anti-Submarine Warfare Command to provide a 100 foot standoff for marine mammal pens. The marine mammal pens need to be moved due to the construction near their current pens.

Both Security Zones will safeguard Naval assets, such as vessels and waterfront facilities from destruction, loss of injury from sabotage, or other subversive acts, accidents or other causes of a similar nature and still allow for safe

navigation around the security zones. No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, The Commander of Naval Base Point Loma, the Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

D. Discussion of Proposed Rule

As stated above, to safeguard portions of the San Diego Bay in direct support of the U.S. Navy, the Coast Guard proposes the expansion of a portion of the existing San Diego Bay naval security zone at Naval Base Point Loma surrounding the existing and planned rebuilt fuel pier and the creation of a security zone indefinitely at Naval Mine and Anti-Submarine Warfare Command for the U.S. Navy to house relocated marine mammal pens.

The proposed security zone at the Naval Base Point Loma Fuel Pier would entirely overlap the existing security zone at 33 CFR 165.1102, which would be amended to reflect the additional coordinates from the additional 500 feet of standoff distance adjacent to the fuel pier. The limits of the expanded Naval Base Point Loma Fuel Pier security zone will be bound by the following coordinates:

32°42' 28.8" N, 117°14' 13.2" W

32°42' 28.8" N, 117°14' 12.6" W

32°42' 10.2" N, 117°14' 3" W

32°42' 6.2" N, 117°14' 1.5" W
32°41' 49.5" N, 117°14' 7" W
32°41' 47.4" N, 117°14' 11.4" W
32°41' 43.8" N, 117°14' 12.6" W
32°41' 31.8" N, 117°14' 13.8" W
32°41' 33" N, 117°14' 1.2" W
32°41' 10.2" N, 117°13' 57" W
32°41' 10.2" N, 117°13' 58.2" W

The proposed security zone at the Naval Mine and Anti-Submarine Warfare Command would provide for 100 feet of standoff distance. The limits of the new Naval Mine and Anti-Submarine Warfare Command security zone will be bound by the following coordinates:

32°43' 40.9" N, 117°12' 54.9" W
32°43' 40.6" N, 117°12' 52.3" W
32°43' 22.5" N, 117°12' 57.8" W
32°43' 23.4" N, 117°13' 1.3" W

Both Security Zones will safeguard Naval assets, such as vessels and waterfront facilities from destruction, loss of injury from sabotage, or other subversive acts, accidents or other causes of a similar nature and still allow for safe navigation around the security zones. No persons or vessel may

enter or remain in the security zones without permission of either the Captain of the Port, the Commander of Naval Base Point Loma, the Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the size and location of the security zones. Vessels that may operate for recreational or commercial purposes within the area encompassed by the security zone expansion and establishment, will not be impacted by the proposed regulation. Sufficient navigable water exists adjacent

to the security zones and the Federal channel.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

(1) This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay.

(2) This proposed rule would not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the security zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying

with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves modifying an already existing security zone to provide for greater vessel protection for a new fuel pier and the adding of a new security zone indefinitely for the protection of relocated U.S. Navy marine mammal pens. This rule only relates to the establishment and modification of limited access areas, and not to the environmental impacts with the development of a new pier.

This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise §165.1102 to read as follows:

§ 165.1102 Security Zone; Naval Base Point Loma; San Diego Bay, San Diego, CA.

(a) Location. The following area is a security zone: The water adjacent to the Naval Base Point Loma, San Diego, CA, enclosed by the following coordinates:

32°42' 28.8" N, 117°14' 13.2" W (Point A)

32°42' 28.8" N, 117°14' 12.6" W (Point B)

32°42' 10.2" N, 117°14' 3" W (Point C)

32°42' 6.2" N, 117°14' 1.5" W (Point D)

32°41' 49.5" N, 117°14' 7" W (Point E)

32°41' 47.4" N, 117°14' 11.4" W (Point F)

32°41' 43.8" N, 117°14' 12.6" W (Point G)

32°41' 31.8" N, 117°14' 13.8" W (Point H)

32°41' 33" N, 117°14' 1.2" W (Point I)

32°41' 10.2" N, 117°13' 57" W (Point J)

32°41' 10.2" N, 117°13' 58.2" W (Point K)

Thence running generally north along the shoreline to Point A.

(b) Regulations. (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the

security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the areas of either zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Base Point Loma; or Commander, Naval Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278-7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Base Point Loma or the Commanding Officer Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556-1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.

(c) Definitions. For purposes of this section: Captain of the Port San Diego, means the Commanding Officer of the Coast Guard Sector San Diego; Commander, Navy Region Southwest, means the Navy Region Commander responsible for the Southwest Region; Commanding Officer, Naval Base Point Loma, means the Installation Commander of the naval base located on Point Loma, San Diego, California; Designated Representative, means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San

Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

2. Add § 165.1103 to read as follows:

§ 165.1103 Security Zone; Naval Mine Anti Submarine Warfare Command; San Diego Bay, San Diego, CA.

(a) Location. (1) The following area is a security zone: The water adjacent to the Naval Mine Anti Submarine Warfare Command, bound by the following coordinates:

32°43' 40.9" N, 117°12' 54.9" W (A)

32°43' 40.6" N, 117°12' 52.3" W (B)

32°43' 22.5" N, 117°12' 57.8" W (C)

32°43' 23.4" N, 117°13' 1.3" W (D)

Thence running generally northwest along the shoreline to Point A.

(2) The proposed security zone at the Naval Mine Anti Submarine Warfare Command would be established to provide for the 100 feet of standoff distance.

(b) Regulations. (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the areas of either

zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Mine Anti Submarine Warfare Command; or Commander, Naval Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278-7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Mine Anti Submarine Warfare Command or the Commander, Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556-1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.

(c) Definitions. For purposes of this section: Captain of the Port San Diego, means the Commanding Officer of the Coast Guard Sector San Diego; Commander, Navy Region Southwest, means Navy Region Commander responsible for the Southwest Region; Commanding Officer, Naval Mine Anti Submarine Warfare Command, means the Installation Commander of the naval base located on Point Loma, San Diego, California; Designated Representative, means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: July 30, 2013

J. A. Janszen
Commander, U.S. Coast Guard
Acting, Captain of the Port San Diego

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